
HOUSE BILL 1719

State of Washington

60th Legislature

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By Representatives Campbell, Ericks, Dunn, Moeller, O'Brien, Kelley and VanDeWege

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1 AN ACT Relating to ephedrine, pseudoephedrine, and
2 phenylpropanolamine; amending RCW 69.43.120 and 69.43.105; and
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 69.43.120 and 2001 c 96 s 10 are each amended to read
6 as follows:

7 (1) Any person who possesses:

8 (a) More than fifteen, but less than thirty, grams of ephedrine,
9 pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts
10 of isomers, or a combination of any of those substances, is guilty of
11 a gross misdemeanor.

12 (b) Thirty grams or more of ephedrine, pseudoephedrine, or
13 phenylpropanolamine, their salts, isomers, or salts of isomers, or a
14 combination of any of those substances, is guilty of a class C felony.

15 (2) This section does not apply to any of the following:

16 (a) A pharmacist or other authorized person who sells or furnishes
17 ephedrine, pseudoephedrine, or phenylpropanolamine, their salts,
18 isomers, or salts of isomers upon the prescription of a practitioner,
19 as defined in RCW 69.41.010;

1 (b) A practitioner who administers or furnishes ephedrine,
2 pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts
3 of isomers to his or her patients;

4 (c) A pharmacy, manufacturer, or wholesaler licensed by, or
5 shopkeeper or itinerant vendor registered with, the department of
6 health under chapter 18.64 RCW;

7 (d) A person in the course of his or her business of selling,
8 transporting, or storing ephedrine, pseudoephedrine, or
9 phenylpropanolamine, their salts, isomers, or salts of isomers, for a
10 person described in (a), (b), or (c) of this subsection; or

11 (e) A person in possession of more than fifteen grams of ephedrine,
12 pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts
13 of isomers in their home or residence under circumstances consistent
14 with typical medicinal or household use as indicated by, but not
15 limited to, storage location and possession of products in a variety of
16 strengths, brands, types, purposes, and expiration dates.

17 **Sec. 2.** RCW 69.43.105 and 2005 c 388 s 2 are each amended to read
18 as follows:

19 (1) For purposes of this section, "traditional Chinese herbal
20 practitioner" means a person who is certified as a diplomate in Chinese
21 herbology from the national certification commission for acupuncture
22 and oriental medicine or who has received a certificate in Chinese
23 herbology from a school accredited by the accreditation council on
24 acupuncture and oriental medicine.

25 (2) A pharmacy licensed by, or shopkeeper or itinerant vendor
26 registered with, the department of health under chapter 18.64 RCW, or
27 an employee thereof, a practitioner as defined in RCW 18.64.011, or a
28 traditional Chinese herbal practitioner may not knowingly sell,
29 transfer, or otherwise furnish to any person a product at retail that
30 he or she knows to contain any detectable quantity of ephedrine,
31 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
32 salts of isomers, without first obtaining photo identification of the
33 person that shows the date of birth of the person.

34 (3) A person buying or receiving a product at retail containing any
35 detectable quantity of ephedrine, pseudoephedrine, or
36 phenylpropanolamine, or their salts, isomers, or salts of isomers, from
37 a pharmacy licensed by, or shopkeeper or itinerant vendor registered

1 with, the department of health under chapter 18.64 RCW, or an employee
2 thereof, a practitioner as defined in RCW 18.64.011, or a traditional
3 Chinese herbal practitioner must first produce photo identification of
4 the person that shows the date of birth of the person.

5 (4) Any product containing any detectable quantity of ephedrine,
6 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
7 salts of isomers, shall be kept in a central location that is not
8 accessible by customers without assistance of an employee of the
9 merchant.

10 (5) No pharmacy licensed by, or shopkeeper or itinerant vendor
11 registered with, the department of health under chapter 18.64 RCW, or
12 an employee thereof, a practitioner as defined in RCW 18.64.011, or a
13 traditional Chinese herbal practitioner may sell any product containing
14 any detectable quantity of ephedrine, pseudoephedrine, or
15 phenylpropanolamine, or their salts, isomers, or salts of isomers, to
16 a person that is not at least eighteen years old.

17 (6) The board of pharmacy, by rule, may exempt products containing
18 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
19 isomers, or salts of isomers, in combination with another active
20 ingredient from the requirements of this section if they are found not
21 to be used in the illegal manufacture of methamphetamine or other
22 controlled dangerous substances. A manufacturer of a drug product may
23 apply for removal of the product from the requirements of this section
24 if the product is determined by the board to have been formulated in
25 such a way as to effectively prevent the conversion of the active
26 ingredient into methamphetamine. The burden of proof for exemption is
27 upon the person requesting the exemption. The petitioner shall provide
28 the board with evidence that the product has been formulated in such a
29 way as to serve as an effective general deterrent to the conversion of
30 pseudoephedrine into methamphetamine. The evidence must include the
31 furnishing of a valid scientific study, conducted by an independent,
32 professional laboratory and evincing professional quality chemical
33 analysis. Factors to be considered in whether a product should be
34 excluded from this section include but are not limited to:

35 (a) Ease with which the product can be converted to
36 methamphetamine;

37 (b) Ease with which ephedrine, pseudoephedrine, or

1 phenylpropanolamine is extracted from the substance and whether it
2 forms an emulsion, salt, or other form;

3 (c) Whether the product contains a "molecular lock" that renders it
4 incapable of being converted into methamphetamine;

5 (d) Presence of other ingredients that render the product less
6 likely to be used in the manufacture of methamphetamine; and

7 (e) Any pertinent data that can be used to determine the risk of
8 the substance being used in the illegal manufacture of methamphetamine
9 or any other controlled substance.

10 (7) Nothing in this section applies:

11 (a) To any product containing ephedrine, pseudoephedrine, or
12 phenylpropanolamine, or their salts, isomers, or salts of isomers that
13 is not the only active ingredient and that is in liquid, liquid
14 capsule, or gel capsule form;

15 (b) To the sale of a product that may only be sold upon the
16 presentation of a prescription;

17 (c) To the sale of a product by a traditional Chinese herbal
18 practitioner to a patient; or

19 (d) When the details of the transaction are recorded in a pharmacy
20 profile individually identified with the recipient and maintained by a
21 licensed pharmacy.

22 (8)(a) No pharmacy licensed by, or shopkeeper or itinerant vendor
23 registered with, the department of health under chapter 18.64 RCW, a
24 practitioner as defined in RCW 18.64.011, or a traditional Chinese
25 herbal practitioner may retaliate against any employee that has made a
26 good faith attempt to comply with the requirements of this section by
27 requesting that a customer present photo identification, making a
28 reasonable effort to determine the customer's age.

29 (b) No pharmacy licensed by, or shopkeeper or itinerant vendor
30 registered with, the department of health under chapter 18.64 RCW, a
31 practitioner as defined in RCW 18.64.011, or a traditional Chinese
32 herbal practitioner is subject to prosecution under subsection (9) of
33 this section if they made a good faith attempt to comply with the
34 requirements of this section by requesting that a customer present
35 photo identification, making a reasonable effort to determine the
36 customer's age.

37 (9) A violation of subsections (1) through (8) of this section is
38 a gross misdemeanor.

1 (10) It is a class C felony offense to display or cause or permit
2 to be displayed any fictitious or fraudulently altered driver's license
3 or identicard as required under subsection (3) of this section as a
4 means to purchase or receive a product at retail containing any
5 detectable quantity of pseudoephedrine or its salts, isomers, or salts
6 of isomers.

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